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Order 2000-9-28
Served: September 29, 2000



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 29th day of September, 2000

Applications of

**AMERICA WEST AIRLINES, INC.
and MESA AIRLINES, INC.**

LEGEND AIRLINES, INC.

NATIONAL AIRLINES, INC.

SUN COUNTRY AIRLINES, INC.

SPIRIT AIRLINES, INC.

For exemptions from Subparts K and S of Part 93 of
Title 14 Code of Federal Regulations pursuant to
49 U.S.C. § 41714 (c)

Dockets OST-2000-7180-42
OST-2000-7198-5

OST-2000-7134-9
OST-2000-7180

OST-1999-5521-15
OST-2000-7180

OST-2000-7180
OST-2000-7284-5

OST-2000-7180

ORDER

SUMMARY

By this order the Department is reallocating two Chicago O'Hare slot exemptions from Sun Country Airlines, Inc., to Spirit Airlines, Inc.

BACKGROUND

As directed by the provisions of 49 U.S.C § 41717(c) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), by Order 2000-5-20 the Department awarded a total of 30 slot exemptions to six new entrant air carrier or limited incumbent air carriers to provide air transportation to or from Chicago O'Hare International Airport. For those purposes, a new entrant air carrier or limited incumbent air carrier was defined as an air carrier or commuter operator that held or

operated (or held or operated, since December 16, 1985) fewer than 20 slots and slot exemptions at O'Hare.¹

Among the carriers granted O'Hare slot exemptions was Sun Country Airlines for six slot exemptions to provide nonstop service between Chicago O'Hare Airport and Minneapolis/St. Paul, MN and six slot exemptions to Spirit for any of the airports in Florida and South Carolina that Spirit proposed in Docket OST-2000-7180, to be allocated based on its assessment of market conditions and system needs. Spirit had requested 19 slot exemptions for nonstop services to Orlando, Tampa, Florida (four slot exemptions each); Ft. Lauderdale, Florida (three slot exemptions); and West Palm Beach, Florida, and Myrtle Beach, South Carolina (two slot exemptions each).

By letter dated August 10, 2000, Sun Country informed the Department that it would not be utilizing two of the slot exemptions awarded by the Department. As a result, by Notice dated August 30, 2000, the Department invited interested parties to apply for the two slot exemptions returned by Sun Country. Carriers that had applied but not received the full complement of slot exemptions requested were invited to submit a letter of continuing interest.

On August 30, 2000, Spirit notified the Department by letter of its interest in obtaining the two available O'Hare slot exemptions to provide service to the communities listed in its original application. No other carrier applied for the two available slot exemptions or submitted a letter of interest.

DECISION

We have decided to grant Spirit's request for the two available O'Hare slot exemptions. 49 U.S.C. § 41717(c)(1) directed the Secretary to grant by order a total of 30 slot exemptions from the requirements under 14 C.F.R. Part 93, Subparts K and S to any new entrant air carrier or limited incumbent air carrier to provide air transportation to or from Chicago's O'Hare Airport. 49 U.S.C. § 41717(c)(2) required the Secretary to grant those 30 slot exemptions within 45 days of the date of the request for such exemptions.

Since we must now reallocate the two exemptions that Sun Country has returned, and since no other carrier has expressed an interest in them, we will grant Spirit's request for the two unused slot exemptions consistent with its proposed service outlined in Docket 2000-7180 and with the conditions in Order 2000-5-20.

¹ 49 U.S.C. §41714(h). In addition, under 49 U.S.C. § 41714(k) "...an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceed 20 slots and slot exemptions."

Administrative Terms

As the FAA slot regulations make clear "slot(s) do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time..." to fulfill the Department's operating needs.

14 CFR 93.223(a). Under the provisions of 49 U.S.C. § 41714(j) Spirit may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions. Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it otherwise could not, *i.e.*, Spirit must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

This Order is issued under authority delegated in 49 CFR 1.56(a).

ACCORDINGLY,

1. The Department withdraws the grant of two exemptions from 14 C.F.R. Part 93, Subparts K and S, to enable Sun Country Airlines, Inc., to serve Chicago O'Hare International Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. as described ordering paragraph 1 of Order 2000-5-20;
2. The Department grants exemptions from 14 C.F.R. Part 93, Subparts K and S, to Spirit Airlines, Inc., (two slot exemptions to serve any of the airports in Florida and South Carolina that it proposed in Docket OST-2000-7180, to be allocated based on Spirit's assessment of market conditions and system needs) to enable Spirit to conduct the operations described in this order at Chicago O'Hare International Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. at times to be determined in consultation between the Spirit and the Federal Aviation Administration;
3. The Department directs Spirit Airlines, Inc., to contact the Airspace and Air Traffic Law Branch of the Office of the Chief Counsel in the Federal Aviation Administration as soon as possible following the issuance of this order to determine with the Federal Aviation Administration the actual times for arriving and departing flights as authorized by this order and to establish the starting date for implementing the schedule;
4. We grant all motions to file otherwise unauthorized documents; and

5. We will serve this order on all interested parties.

By:

FRANCISCO J. SANCHEZ
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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